IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CIVIL NO. 01-00412 SPK-KSC
CIVIL NO. 99-00335 SPK-KSC

ORDER RE DISCOVERY

[FILED SEPTEMBER 11, 2003]

MARSHALL KENNETH FLOWERS)
)
Plaintiff,)
)
vs.)
)
DEPARTMENT OF THE ARMY,)
25TH INFANTRY DIVISION (L))
and FORT JACKSON FEDERAL)
CREDIT UNION,)
)
Defendants.)
_____)
)
MARSHALL KENNETH FLOWERS,)
and ANNA FLOWERS,)
)
Plaintiffs,)
)
vs.)
)
UNITED STATES DEPARTMENT OF)
THE ARMY; and FIRST HAWAIIAN)
BANK,)
)
Defendants.)
_____)

APPENDIX "A"

Before the court is a discovery dispute regarding the taking of depositions of certain United States Army ("Army") and Fort Jackson Federal Credit Union ("Fort Jackson") witnesses. Letter briefs were filed by the parties on August 22 and 26, 2003. The matter came on for a status conference on September 9,2003. Plaintiffs Marshall K. Flowers ("Mr. Flowers") and Anna Flowers ("Plaintiffs") appeared pro se. Jeffre Juliano, Esq. appeared for defendant Fort Jackson; Patsy Kirio, Esq. for defendant First Hawaiian Bank; and Theodore Meeker, Esq. for defendant Army.

Plaintiffs seek the renewed opportunity to depose Fort Jackson witnesses Velma Jones and Kenneth Creticos, and Army witnesses General Hill, Major Ohlweiler and Major Bagwell (collectively witnesses").

Originally, Plaintiffs' former counsel, Charles Brown, Esq. ("Brown"), and defense counsel agreed on the week of July 21, 2003 for the taking of the depositions of the above-named witnesses. As late as July 17, 2003, attorney Brown confirmed the dates of the depositions. Fort Jackson noticed the depositions of the three Army witnesses and the Army noticed the depositions of the two Fort Jackson witnesses. However, apparently Mr. Flowers was predisposed on the dates of the depositions and apparently due to his insistence that he be present for the depositions, neither he nor counsel appeared at any of the depositions which were taken on the mainland as noticed. Plaintiffs did not file a protective order to prevent the depositions from going forward. Neither did they bring any related discovery dispute before this court in a timely fashion.

Nevertheless, due to Plaintiffs' *now pro se* status as well as considerations of fundamental fairness, the court hereby orders that Plaintiffs are granted leave to take depositions of the above-named witnesses on the following terms and conditions.

First, the above-named witnesses shall make themselves available for deposition in their respective resident cities at times and dates agreed to by all of the parties. Second, the depositions of all five witnesses must be completed on or before November 30, 2003. Third, unless otherwise enlarged by the court, the duration of each deposition shall be limited to two hours. Fourth, in order to mitigate the financial

burden to defendants resulting from Plaintiffs' non-appearance at the completed depositions of the above-named witnesses, Plaintiffs must reimburse defendants Army and Fort Jackson an amount equal to one-half of the reasonable travel and lodging expenses incurred by defendants resulting from their attorneys having to attend the depositions of the above-named witnesses on the mainland, if any. Finally, the depositions of the witnesses may be taken by telephone or by video teleconference.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii: SEP 11 2003.

/S/ Kevin S.C. Chang
Kevin S.C. Chang
United States Magistrate Judge

CIVIL NO. 01-00412 SPK-KSC MARSHALL KENNETH FLOWERS vs. DEPARTMENT OF ARMY, et. al.; CIVIL NO. 99-00335 SPK-KSC; ORDER RE DISCOVERY

No. 06-819

Supreme Court of the United States

Marshall K. Flowers and Anna Flowers,

Petitioners,

v.

United States Army, 25TH Infantry Division; Fort Jackson Federal Credit Union, First Hawaiian Bank; United States of America; Secretary Of the Army, Thomas E. White, and John D. Ohlweiler, Major

Respondents.

Petitioner's Marshall K. Flowers Application for Justice Anthony Kennedy or the Court to Review Respondents' Application to Extend the Time to File a Response Brief Due on March 7, 2007 to Petitioner's Writ of Certiorari and Request to File a Single Reply Brief Under Three Separate Sections

---

To the U.S Supreme Court or the Honorable Justice Anthony Kennedy:

Pursuant to Rule 30.4, Rules of the United States Supreme Court, Petitioner Marshall K. Flowers request the Honorable Justice Kennedy or the Court reconsider the clerk granting of respondents United States, Fort Jackson Federal Credit Union, and First Hawaiian Bank an extension to submit a response as directed by the Court until April 7, 2007. Petitioner's support for review is as follows:

On December 8, 2006 Petitioners submitted to this Honorable Court a Petition for Writ of Certiorari in the above-entitled case that placed before the Court the question "[w]hether Feres v. United

APPENDIX "B"

States, 340 U.S. 135 (1950) bars Petitioner's claim under the Right to Financial Privacy Act as affirmed by United States Court of Appeals for the Ninth Circuit.

On January 5, 2007 the Court entered the waiver of respondent Fort Jackson Federal Credit Union; on January 10, 2007 the wavier of respondent First Hawaiian Bank, and on January 11, 2007 the waiver for respondent United States.

On February 5, 2007 the Honorable Court requested a response from respondents to be filed with the Court no later than March 7, 2007. Petitioners received waivers (signed) from respondents Fort Jackson Federal Credit Union and First Hawaiian Bank but notified the Court of non-receipt of a signed waiver from the Solicitor General representing the United States and submitted to all parties as required by the rule. Rule 29 states that

> proof of service shall accompany the document when presented to the clerk for filing and should be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of names, addresses, and telephone numbers of counsel indicating the names of the parties each counsel represents. Proof of service may consist of.. .(a) an acknowledgement of service, signed by counsel of record for the party served, and bearing the address and telephone number of each counsel.

Rule 29, Rules of the United States Supreme Court

On or about February 16, 2007 Petitioner received an application with proof of service from both Fort Jackson Federal Credit Union and First Hawaiian Bank requesting the clerk of the court grant an extension to file their response as requested by the Court to and including April 6, 2007. Petitioners did not receive an application for an extension or proof of service from the Solicitor General or authorized representative of the United States.

On February 21, 2006 Petitioner received in the U.S. Mail the Chief Deputy Clerk, Mr. Christopher W. Vasil approval stated as

follows:

> Dear Ms. Tang:
>
> Your response of February 15, 2007, for an extension of time within which to file a response to the petition for a writ of certiorari in the above-entitled case has been granted; **the time has been extended to and including April 6, 2007, for all respondents.**

Argument

Petitioner has not received an application for an extension from the Solicitor General or his authorized representative and respectfully believes Mr. Vasil granting of an extension in absence of an application is unwarranted and contrary to the rules. Additionally, Petitioner believes that respondents Fort Jackson Federal Credit Union and First Hawaiian Bank's application for an extension is unjustifiable, unwarranted, and even more dilatory delay tactics.

Respectfully, if the Honorable Justice Kennedy or the Court deems respondents application for an extension justifiable. Petitioner request Justice Kennedy or the court reconsider and shorten the length of time. Further, if the Solicitor General has submitted an application for an extension to the Court, respectfully request the Court direct that the Solicitor General or his authorized representative mail petitioner and all parties a copy of the application to include proof of service.

Lastly and respectfully, Petitioner request that their reply brief to respondents' opposition the Court allow a singe reply brief in separate sections that address each respondent response thereby increasing the page limitation to 30 pages (10 pages each for each section, respondents). If the Court deems this request in non-compliance with the Court rules, petitioner will prepare the reply

brief as determined by the rules of this Honorable Court.

Conclusion

Respectfully, Petitioner request Justice Kennedy or this Honorable Court reconsider the Order of the clerk granting respondents Fort Jackson Federal Credit Union and First Hawaiian Bank until April 7, 2007 to respond and the Court respectfully determined if the Solicitor General should have been granted an extension in absence of an application requesting an extension or petitioner's non-receipt. Further, that the court grant petitioner's request to reply to respondents under a single copy reply brief (tan) with three section and page limitation of thirty pages (10 pages limited for each respondent)

Respectfully submitted,
02-23-2007
/S/ Marshall K. Flowers
P.O. Box 29632
Honolulu, Hawaii 96820
1 808 256-2279

Petitioner-Pro Se

Certificate of Service

I, Marshall K. Flowers, hereby certify under penalty of perjury, under the laws of the United States of America that the following document(s):

> Petitioner's Marshall K. Flowers Application for Justice Anthony Kennedy or the Court to Review Respondents' Application to Extend the Time to File a Response Brief Due on March 7, 2007 to Petitioner's Writ of Certiorari and Request to File a Single Reply Brief Under Three Separate Sections

was/were served by placing a true and correct copy of the said document(s) in the United States mail by: (X) First Class (X) * Denotes Personal Service (Hand Delivery) (+) Other Overseas Airmail

TO:

Office of the Solicitor General
950 Pennsylvania Avenue, Room 5614
Washington, D.C. 20530-0001

U.S. Department of Justice, Appellate Staff
Attn: Alisa Klein
950 Pennsylvania Ave., N.W. Room 7235
Washington, D.C. 20530-0001
Attorney, Civil Division

---

* George W. Playdon
Jeffre W. Juliano
Jeffrey K. Hester
Grosvenor Center, 24th Floor
733 Bishop Street
Honolulu, Hawaii 96813